**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.6425 OF 2004**

Gangadhar Narayan Sayanna & 6 Ors ..Petitioner.

Versus.

Thane Municipal Corporation & 5 Ors ..Respondents.

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Mr.Y.S.Jahagirdar, Sr. Advocate with Mr.R.V.More

for Petitioners

Mr.R.S.Apte for Respondent nos. 1 and 2.

Mr.Shekhar Naphade, Sr. Advocate with Mr. J.B.Patel for Respondent nos. 5 and 6.

**CORAM: A.P.SHAH AND**
**S.U.KAMDAR, JJ**

**DATE : 30TH SEPTEMBER, 2004**

**ORAL JUDGMENT ( Per S.U.Kamdar, J )**

1. By the present petition, the petitioner is challenging an order dated 2nd February, 2000 passed by the Thane Municipal Corporation inter alia implementing the Town Planning Scheme Thane - 1 and handing over Final plot No.208 to Varsha Society. The petitioners are also challenging the order dated 3rd June, 2004 by which the Thane Municipal Corporation has granted sanction and/or development permission in respect of Final plot No.208 in favour

of respondent no.5.

. In a nutshell, case of the petitioners is as under :

2. According to the petitioners, the petitioner was an owner in respect of an original plot of land bearing No.122 part whereas respondent no.4 was the owner of an original plot being Survey No. 102/2 and 102/3/1. Under the Town Planning Scheme sanctioned under the provisions of the Maharashtra Regional Town Planning Act, 1966 the said original plots being Survey Nos.102 (pt) as well as Survey No.122-A merged in the final plots being Final plot Nos. 103 and 208. The said final plots are allotted to both the petitioner and respondent no.4 under the sanctioned scheme. According to the petitioners, the petitioner's area of the final plot No.203 is reduced by 660 sq.meters and that on the said land respondent no.5 is carrying on construction unauthorisedly. It is the further case of the petitioners that under the Town Planning scheme sanctioned, said area of 660 sq.meters was initially given to the original plot No. 276-B and it has been subsequently re-allotted as final plot No.203. According to the petitioners, therefore an area of 660 sq.meters forms part of final plot

No.203 and do not form a part of final plot No. 208. Thus, the petitioners submitted that respondent nos.5 and 6 are forcibly claiming to be the owners in respect of the said 660 sq.meters of land as forming part of final plot No.208 of Town Planning Scheme. On the basis of the aforesaid contention, the petitioner has filed the present petition seeking that the said area of 660 sq.meters should not be permitted to be developed by the respondent nos. 5 and 6 because it does not form part of plot No.208.

3. We have perused the record. We find from the extract of the Town Planning Scheme as well as that of the impugned order dated 2nd February, 2000 in which the Corporation has considered the said Town Planning Scheme and has pointed out that after giving hearing to all sub-plot holders, Final plot No.208 has been carved out. It has been further stated that the said Final plot No.208 includes area of about 660 sq.meters which was originally forming part of original plot No.276 B bearing Survey No.122 A. In the extract of the Town Planning Scheme produced, it has been mentioned that the area of the original plot No.122A was around 2012 sq.meters. However, on re-allocation as final plot No.203 the area has been reduced to 1689 sq.meters. Similarly,

in respect of plot No.208, total area of the original plot Nos.101, 102, 104 and 121 on consolidation was 45,928 sq.mtrs. However, the area of Final plot allotted on reorganisation was 27,430.9 sq.meters. Thus, in re-organisation of the scheme the original plots held by various parties including the petitioner and respondent nos. 5 and 6 have been merged and Final plots have been carved out in accordance with the scheme. The petitioners has in re-organisation of the said scheme has lost 660 sq. meters. Similarly respondent no.4 has also lost some area while carving out Final plot No.208. The petitioner has been duly compensated by the Arbitrator in an award passed which forms part of the Town Planning Scheme. In the said award, the loss of portion of original plot of land belonging to the petitioner has been compensated by giving set off against the betterment charges and by taking into consideration the market value of the re-allotted plots. The said scheme has been sanctioned and has become final.

4. In our view, once the scheme has been sanctioned and has become final, rights of the parties has been merged into final Town Planning Scheme which is in respect of final plot. Rights of the original owners in the original plot stands extinguished. In

that view of the matter, we are of the opinion that the present petition has no merits. Contention of the learned counsel for the petitioners that the respondent nos. 5 and 6 are constructing on the plot of land of 660 sq.meters belonging to the petitioners is also without any substance. Thus, we find no infirmity in the impugned orders passed by the respondent no.1. Apart therefrom, learned counsel appearing for the respondent nos. 5 and 6 has pointed out that in the suit No.1850 of 2001, this Court directed survey of the said plot of land and map has been prepared which also clearly indicates that the land forming subject matter of final plot No.208 which has been allotted in respect to respondent nos. 5 and 6 includes the said area of 660 sq.metres. In the aforesaid circumstances, we find no merit in the present petition and dismiss the same. However, there shall be no order as to costs.

A.P.SHAH,

S.U.KAMDAR, J